IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 376 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : YES

BOLABHAI HIRABHAI

Versus

STATE OF GUJARAT

Appearance:

MR AR THACKER for Petitioner [Appointed under Legal Aid]

MR KP RAVAL, APP for Respondent No.1, State of Guj.

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE J.R.VORA

Date of decision: 20/06/2000

ORAL JUDGEMENT(Per J.N.Bhatt, J.)

Whether, the appellant-accused is guilty of offence punishable under section 302 of the Indian Penal Code (IP Code), or his act falls within the exception under section 84 of the IP Code, is the question posed before us, in this appeal, against the judgment and order of conviction recorded by the learned Additional Sessions Judge, Sabarkantha, in Sessions Case No.103/95, on 23.4.1996.

Pursuant to the direction contained in the order dated October 28, 1997, in Criminal Appeal No.976/97 arising out of SLP (Crl.) No.2615/97, passed by the Hon'ble Supreme Court, this appeal came to be re-admitted and record and proceedings were called for and since the appellant is in custody and he could not secure service of private Advocate and it seems he is an indigent person, he was provided with, legal aid in his defence. While disposing of the appeal, the Hon'ble Supreme Court observed to dispose of this appeal, as expeditiously as possible, preferably, within a period of three months from the date of communication of the order. [It is, really, very unfortunate that this High Court could not hear the matter within the time-frame desired in the order and failed to honour the wish of the Apex Court, apparently, as it seems to be on account of the heavy workload. However, upon our attention being drawn in current sitting with such business which began on 12.6.2000, we, urgently, heard the appeal.]

A few, material, and relevant facts, leading to the rise of this appeal, need narration, so as to appreciate, the merits of the appeal and the challenge by the respondent State. The appellant, who, is the original accused, came to be charged for having committed offence punishable under section 302 of the IP Code, for committing the murder of his wife, Jiji, by giving axe blows, on 10.6.95, around 2.00 p.m. in his house, situated, at village Digthali, Taluka Khedbrahma, District Sabarkantha, Gujarat, to which the accused denied and also raised the plea of insanity.

Accused, according to the prosecution, entertained a superstitious belief and a notion that his deceased wife was practising witch-craft, as a result of which, the health of the accused was affected and deteriorated. Deceased, Jiji and accused, her husband, lived the married life more than a quarter-century and out of which there were six children. Prosecution witness Vanabhai was the eldest son. Prosecution witness No.1, Rashma Hira, was the brother of the accused, who had lodged the complaint, Ex.9, before PSI, Khedbrahma, on the same day

after the incident occurred.

Pursuant to the complaint of prosecution witness, Rashma, the investigation was commenced. Muddamal axe, allegedly, used by the accused was recovered from the venue of offence having blood marks.

The defence raised on behalf of the accused is that of an insanity. In support of this version, defence, witness Dr.R.B.Agarwal, M.D., in Phychiatrist was also examined. It is, therefore, the defence that the act of the accused is covered by the exception prescribed in Section 84 of the IP Code. Since the accused could not afford to engage the service of a private advocate, the appeal came to be filed through Jail, and, therefore, he has been provided with legal assistance in support of his defence in the appeal.

So far as, the homicidal death of deceased, Jiji, wife of the accused is concerned, there is no dispute. The prosecution has, successfully, established by leading evidence in general and the medical evidence of the prosecution witness No.10, K.T.Akhani, at Ex.27, in particular, that deceased, Jiji, died a homicidal death on account of the injuries sustained by her, which were possible by muddamal axe produced, at article No.5. The P.M. report is produced, at Ex.28.

The case of the prosecution that the author of the homicidal death is the husband-accused, the appellant in this appeal, is also proved without any doubt in view of the evidence of the prosecution in general and in view of the evidence of prosecution witness No.1, complainant, Reshma Hira, at Ex.8, who is an eye-witness and brother of the accused and the evidence of prosecution witness No.2, Vana Bhola, Ex.10, another eye witness and who is the son of the accused.

In view of the specific plea of insanity and general exception laid down in section 84 of the IP Code, let us first consider the provisions thereof.

Section 84 of IP Code is one of the general exceptions incorporated in Chapter IV of IP Code from section 76 to 106. General exceptions in Chapter IV of the IP Code clearly go to show that such are the exceptions in favour of infants, lunatics, idiots persons, or persons incapable of judgment by reason of intoxication caused against his will, etc. In so far as the defence of the accused is concerned, it will be necessary to refer to the provisions of Section 84, which reads as under:

"84. Nothing is an offence which is done by a peson who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law."

Though the offence is committed, it would fall within the ambit of section 84, if it is, successfully, shown that the act done by the accused, whereby, offence is committed, was the outcome of, or by reason of unsoundness of mind, at the time of acting or doing it, and the act committed by a person in such a situation is not punishable though the offence is committed. A person is incapable of knowing the nature of the act or that he is, mentally, incapacitated to perceive or conceive what he was doing was either wrong or contrary to the provisions of law is exempted from being punished by virtue of inhibition projected in section 84 of the IP Code.

In so far as the general exception inscribed in section 84 is concerned, following material proposition may be articulated before we embark upon the analysis and evaluation of factual position and evidence emerging from the record of the present case.

(1) The plea of insanity is to be established by the accused;

(2) In order to consider the plea of insanity or unsoundness of mind of a person, who, has committed the offence, the facts and relevant events preceded, attended and succeeded to the incriminating event are relevant and material.

(3) The extent and degree of proof in proving the case of general exception is not as high as the degree or extent required of prosecution to establish its case.

(4) It is, therefore, a settled proposition of law that the person propounding anyone of the general exceptions incorporated in section 76 to 106 of the IP Code is not obliged to prove it beyond reasonable doubt as that of the prosecution, but can succeed in probabilising the version or any of the exceptions.

(5) Having once discharged the onus of proving one of the general exceptions, it would be for the

prosecution then to satisfy the Court beyond reasonable doubt that the incriminating act of the person propounding a general exception was not in unsoundness of mind or such a person was knowing the nature of the act, like that, what is right and what is contrary to law.

(6) In support of the plea of insanity, what is required to be shown by the defence is the incapacity of faculty of mind, transitorily, or regularly in knowing the result of the act, whether right or wrong, whether contrary to law or not. Therefore, the defence has to show that the incriminating act was not an act expected of or a design or a decideratum on the part of the maker of such act or offence.

(7) The insanity to be proved is required to be the legal insanity and not the medical insanity which should affect the cognitive faculties depriving of a person from the sense of making a judgment or a choice.

(8) It is, rightly, said by Black Stone that mad man has no will.

(9) A man of unsound mind is, therefore, in all ages, an object of commiseration but as society has to be protected even against the attacks of maniac and, therefore, Sections 328 and 329 of Criminal Procedure Code provide for his detention to prevent mischief.

(10) There are four kinds of persons who may be said to be non compos mentis (not of sound mind), (i) an idiot, (ii) non compos by illness (iii) a lunatic or mad man, and (iv) one who is drunk.

It can, very well, be seen from the aforesaid propositions that in order to succeed in raising the plea of general exceptions and claiming exemption from the criminal liability, it is necessary to establish by defence, on the ground of insanity, that at the time of committing the act leading to an offence, the accused was harbouring or labouring or suffering under such a mental defect or psychological deficiency. In considering whether the accused person was of unsound mind, the state of mind of the accused, at the time of commission of offence, has to be considered. However, acts and behaviour of the accused preceding and succeeding are relevant for determining the state of mind, at the time

of commission of the offence.

In short, in order to succeed in proving the general exception provided in section 84, as stated above, and the resultant legal immunity from criminal liability, a person or a party accused, who, propounds the plea of insanity has to satisfy the court that the incriminating act was not an intended one or that there was incapacity to know and understand the nature of the act and the resultant effect, thereof. In other words, it is necessary to establish what was the nature of act or what was right or wrong was not conceivable and perceivable by the person. No doubt, mere eccentric or some disorder of mind or some defect of faculty of mind which would not affect the judgment and reasons, obviously could not be said to, legally, constitute an act enshrined and prescribed in section 84 of the IP Code.

Undoubtedly, the faculty of mind depriving the person from knowing the right or wrong act incapacitating him from understanding the outcome of the act has various influential factors. It would not be possible to put the same in a straight-jacket formula. It is, therefore, absolutely, imperative to evaluate and analyse the evidence and to form an opinion as to whether the party accused having committed an offence could be said to be governed by the exception or not. It is, therefore, necessary to, closely, look into the relevant factual scenario from the record of the present case.

Needless to mention that the plea of insanity and unsoundness of mind propounded by the appellant-original accused is not believed by the Trial Court. We have, threadbare, examined the reasons assigned in rejecting such a plea. We have, also, given our anxious thoughts to the submissions raised on behalf of the accused reiterating the plea of insanity before us. We have been taken, extensively, through the relevant evidence of the prosecution and the defence witnesses examined by the accused. Therefore, it is necessary to refer to the relevant evidence of the witnesses in the context of the aforesaid propositions.

Prosecution witness No.1, Rashma Hira, was examined at Ex.8. He is the real brother of the accused, on whose evidence, the Trial Court has placed strong reliance. He is also the complainant and eye-witness. However, the Trial Court has not relied on certain material averments emerging from his evidence, in so far as plea of insanity is concerned. Similarly, the Trial Court has also failed to appreciate the evidence of prosecution witness No.2,

Vana Bhola, Ex.10, who is the son of the accused and also, other prosecution witnesses.

In our opinion, the Trial Court has committed serious error causing grave injustice to the accused in not appreciating the following unquestionable factual situation emerging from the record of the present case, out of the depositions of the witnesses, which are relied on by the Trial Court, for the purpose of establishing the guilt of the accused.

(1) Accused committed offence by inflicting axe blow on the person of his wife Jiji without any slightest or remotest allegation of motive. No doubt, we are conscious of the fact that mere absence of motive does not, ipso facto, lead to substantiate the plea of insanity. But it is, surely, one of the circumstances.

(2) The accused was suffering from mental disorder and unsoundness of mind long before the occurrence of the incident in question.

(3) He was not, only, a mentally eccentric or psychic disorder, but was losing complete balance of mind that he has been beating or trying to beat anyone without any rhyme or reason.

(4) He was required to be tied down with rope, many a times, so as to control his emotions and impulses, without which he would beat to an extent of killing.

(5) He was required to be taken to place known as 'Miradatar' which was, superstitiously, believed to be a place curing mentally disorder or unsound person.

(6) The accused was required to be looked after, watched constantly by someone else he would commit not, only, some untoward event or act or even an offence.

(7) He had, unmindfully, started giving axe blows without any reason or motive and also unmindfully thrown the axe there and then at the venue of offence, which may not happen, in a case of intended or planned offence.

(8) He was kept in custody by locking him in a room till the police arrived after the incident as he

was very emotive, impulsive and suffering from unsoundness of mind.

(9) He was under the treatment of Phychiatrist.

(10) He was known by family and villagers as a mad man.

The prosecution witness No.1, Rashma, brother of the accused has, clearly, stated in his evidence, under the cross-examination that his brother-accused has been suffering from unsoundness and disorder of mind, seriously, since last two years prior to the date of incident. He was having frequent such attacks, that he was required to be tied down. He was, therefore, under treatment in a hospital, at Palanpur, where he was given electric shocks. He was getting so much so strong impulses of mind that he was losing his mental balance, as a result of which, he used to beat to an extent of causing serious injuries even to the relatives and family members. He was having such an attack gradually and on having reached to the climax, he was out of control. Therefore, he was required to be tied down with rope.

It is, therefore, very clear, from the evidence of his own brother that the accused has been a victim of unsoundness of mind and, at times, he has been completely out of control and psychologically imbalanced. It is not understood why this part of the evidence of prosecution witness, Rashma Hira, who is, the real brother of the accused is discarded, in so far as plea of insanity is concerned.

Not only that the plea of insanity supported by prosecution witness No.1, brother of the accused is also reinforced by the evidence of PW 2, Vana Bhola, Ex.10. It is also, amply, evident from his testimony that the accused was behaving like an idiot or lunatic and he was, therefore, required constant care and watch by somebody, else he used to catch hold of even strangers without any reason and start beating. He has, also, clearly, admitted that his father was required to be taken to 'Miradatar' as he was, mentally, unsound and that on account of his mental disorder, his father was characterised and known by the village folk and family as mad person. It is, also, clear from his evidence that his father has been under medical care and treatment for unsoundness of mind and insanity. It is also very, clearly, testified that the accused, his father, has been acting like a mad-man or lunatic person since last 3

years before he was examined. The accused was, also, unmindfully catching anybody and beating, as a result of which he was required to be constantly cared and watched by somebody and he was himself looking after him, closely, almost for a period of one year. He has also admitted in his evidence that on account of unsoundness of mind of his father, i.e. accused, he and all his family members were very much disturbed, agitated and annoyed. We have failed to comprehend as to why this part of the evidence of the prosecution witness Vana, an eye-witness, son of the accused, throwing light on the plea of insanity should be thrown overboard. His testimony, supports the plea raised by the accused in his defence and also the evidence of prosecution witness No.1, Rashma, brother of the accused, on this plea.

It would be, also, interesting to refer to the evidence of Prosecution witness No.3, Sanja Jiva, who is the cousin-brother of the accused, who rushed to the venue immediately after the incident, on hearing the shouts of prosecution witness, Vana, son of the accused. From his testimony, it is evident that the accused has been in the habit of hurling filthy abuses by catching anybody by raising shouts on account of unsoundness of mind. Therefore, he was required to be tied down with rope. It is very clear from his testimony that village people were so much so apprehensive and scared of accused that they were not going near to the accused as he was madman. It is, also, admitted by him in the cross-examination that the accused was under medical treatment and he was also taken to Miradatar. Even, at the cost of repetition, it may be stated that Miradatar is a place where persons of unsound mind are taken out of superstitious belief that they will be cured. Prosecution witness, Sanja Jiva, has also admitted in his evidence that the accused was under frequent such attacks of unsoundness of mind and as a result of which on the day of incident though there was a public dinner at the nearby place for the marriage ceremony, the accused desisted from going to the place. He was, according to the evidence of Sanja Jiva, tied down many a times with rope and, also, four to five times when he was behaving in such a way to disturb the security and safety of the villagers.

It would be interesting to note the evidence of prosecution witness No.6, Ratnabhai Fulabhai, examined at Ex.16, who has been declared as hostile witness by the prosecution. However, he has, clearly, admitted in the cross-examination that the accused was required to be tied down on account of unsoundness of mind and idiocy. It is, also, admitted by him that the accused was

required to be shifted to hospital after tying him on account of unsoundness of mind. Of course, he is a hostile witness. However, this part of the story in his testimony is corroborating the version of the defence and supporting the evidence of his own real brother and the cousin brother of the accused, in so far as the unsoundness of mind and insanity of the accused is concerned. It is a settled proposition of law that merely because a witness has been declared hostile, the entire evidence need not be thrown out. A part of the evidence of such a witness can be relied on and in the present case, we find no reason to disbelieve or discard such part of his evidence supporting the plea of insanity.

The evidence of real brother, cousin brother and the son of the accused is, partly, relied on by the Trial Court in so far as the culpability of the accused is concerned. We have not been able to comprehend as to why the close relatives of the accused, whose evidence is, partly, relied on, are not relied on, in so far as the plea of insanity is concerned. The reasons assigned by the Trial Court, in this behalf, are not convincing and not logical. As observed hereinbefore, the plea of insanity or for that purpose, any one of the general exceptions inscribed in Chapter V of the Indian Penal Code, the accused has not to establish beyond reasonable doubt, same as that of the prosecution is required. Even if it is probabilised, it can be considered by the Court. Once, such a plea is spelt out to be plausible or probabilised, it is for the prosecution to show that the incriminating act was not an outcome of the unsoundness of the mind resulting into knowing right or wrong or lawful or unlawful. The acts preceded and succeeded are also relevant to prove the plea of insanity. This proposition is also very well explored, expounded and established.

The plea raised by the accused in claiming the general exception inscribed in section 84 of the IP Code is supported by the testimonies of the aforesaid prosecution witnesses and also by the defence witness Dr. R.B.Agarwal, examined at Ex.36. He is an independent witness who has no reason to testify in favour or against the accused. He is a practising Psychiatrist working as a Medical Officer and also running a private hospital since more than 18 years. He is M.D.Psychiatric, who has many patients not only from Gujarat, but even from adjoining States, like Rajasthan. He has, vividly, described the mental condition of the accused who was under his treatment and who was examined by him.

From the evidence of Dr.Agarwal, it, clearly, and unequivocally, emerges that the accused had severe attack of unsoundness of mind resulting into uncontrollable mental condition. He had examined the accused lastly in his hospital, on 31.10.94. No doubt, the incident has occurred, on 10.6.95, almost, seven months after he, lastly examined the accused. However, it is also clear from the evidence of the brother and the son of the accused that during the last year preceding the date of incident, the mental condition of the accused was so bad and extreme that he was required to be tied down and watched rigourously by the family members. It is, in this context, necessary to appreciate the evidence of Dr. Agarwal, who is a Psychiatrist, under whose care and treatment the accused was given medication. It is, clearly, testified by him that the relatives of the accused were advised that the accused should be admitted as an indoor patient in his hospital, which was not acceptable to the relative of accused for the reasons not brought on record. It was, therefore, by Dr.Agarwal prescribed medicine and kept the accused in his medical management, rather than an indoor patient in his hospital.

When the accused was examined by Dr.Agarwal, he was, totally, uncooperative and out of control having no sense of even clothes. He was not even able to properly speak. He had frequent change of not only gesture, but mental condition, as a result of which he had no sense and control over reason or judgment and the intensity of such a mental condition was, so much so high, that he was deprived of self-control. It is also, clearly, stated by him that such a condition recurs and such an attack may be frequent. It is also clear from his testimony that such type of persons, out of superstition, were being taken to a place known as Miradatar.

It is also, amply, clear from his evidence that the mental attack received on the day of his examination could happen any time even despite the medical treatment. According to his testimony, the accused was a victim of acute psychosis. It is also necessary to observe that Dr.Agarwal has, clearly, mentioned that in case of such an attack, it starts gradually and it becomes known to the relatives or the persons near to such a person. It is not understood as to why the evidence of close relatives, who are believed by the Trial Court, in support of the plea of the prosecution, is discarded when it comes to be relied on by the defence to establish the plea of insanity. Even the defence evidence is, also,

vetripotent to show that the accused is of mentally disorder and psychotic patient and at times resulting into severe gravity of unsoundness or insanity depriving him of his mental balance. Dr.Agarwal is an expert witness practising as a Psychiatrist and running a private hospital since more than 18 years and there is no reason to discard his testimony. In our opinion, the Trial Court has committed a grave error in not accepting the plea of insanity of the accused claiming general exception under section 84 of the Indian Penal Code in view of the evidence of the prosecution and supported by the defence witness and expert psychiatrist, under whose medical management, the accused received treatment.

It is in this context, it would be appropriate, at this juncture to refer to the relevant case law relied on in course of the submissions made before us. Prosecution witness No.1, Rashma, brother of the accused, and prosecution witness No.2, Vana, son of the accused, prosecution witness No.3, Sanja Jiva, cousin brother of the accused, all, who have admitted about the unsoundness of mind of the accused, the mental disorder and the subsequent conduct of the accused leading to the insanity, could have been further questioned in re-examination.

In view of the provisions of Evidence Act, 1872, the Court can permit the parties to reexamine the witnesses. Section 137 of the Evidence Act gives three stages in the examination of witness, such as (1) examination in chief (2) cross-examination and (3) re-examination of witness. The witnesses could have been questioned at the stage of re-examination. The Court is competent and empowered to permit the party and call for the witness. In absence of exercising this right, there is no reason why the admissions and averments made in the cross-examination by the prosecution witnesses, who are close relatives of the accused should not be accepted.

Section 154 of the Evidence Act also provides that the Court may in its discretion permit the party, who has called the witness to put any question to him which might be put in cross examination by the adverse party. Nothing has come on record as to why this right is not exercised and why in absence of exercise of such a right the averments supporting the plea of insanity in the cross-examination of the prosecution witness should not be accepted.

Forensic psychiatry is a potent and powerful weapon in the armory of administration of justice. It is a subject

speciality of psychiatry, which, generally, deals with the application of psychiatry in law and its knowledge to legal issues, like that, psychiatry-law and sometimes with the application of knowledge of law to psychiatric issues, like that, law in psychiatry. Needless to mention, in short it manifests and represents an interface and close relationship between law and psychiatry. It is, really, very unfortunate that forensic psychiatry is still, in India, encraddled. Unlike many other developing countries, in India, the forensic psychiatry is at a rudimentary and buoyancy stage. It is, in reality, a very useful and appropriate legal weapon in search of truth and more so, in a case of a criminal trial. Of course, it is always developing. However, we carry an impression that this branch of science for detection of crime and to understand the plea of defence is yet not, gainfully, employed in the administration of justice.

In this context, reference may be made of a trial of JR Hinckley, which took place in United States. As a matter of fact, it has been world wide known for an attempt to kill the then President Ronald Regan of United States by Hinckley and in the said trial the plea of insanity came to be accepted. No doubt, this case has raised a lot of controversy and debate between the Psychiatrists and experts of law and jurists. It is a case which has raised a different view points between jurists and psychiatrists. Nonetheless, the evaluation of pre-requisite of insanity or unsoundness of mind or diminishing responsibility of mind with regard to legal consequences is an important matter of psychiatry in aid and assistance of the Court in decision making process. Such an assessment or evaluation of dangerousness, insanity or unsoundness of mind or for that purpose recidivism always warrant ethical consideration and it is not only of presentation of empirical data. The empirical base and therapeutically oriented mandate of physician is one side, the normative demands of a legal system has a necessity for living together in a given society is the other side.

Indian law regarding criminal responsibility is a direct descendent of a famous Mac Naughten Rule. It is, in this context, section 84 of the IP Code prescribes that nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind is incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law. Insanity, to be recognised, is an exception to criminal liability, therefore, must be such as to disable an accused person

from knowing the character of the act he was committing when he commits criminal act. The degree of mental unsoundness or disorder are widely variable and while medical evidence as to the extent of unsoundness is admissible in evidence, no doubt, it rests with the Court to declare a degree of unsoundness which has been established by direct or circumstantial evidence, ipso facto, is sufficient or not, to fasten the person with liability in a given case. Really speaking, we must record that it would not be possible to articulate the general rule which can be said to be conclusive as there are wide individual variations from case to case and from person to person, both in regard to the basic unsoundness of mind and its result on the mental capacity to do or perform that act. No doubt, we are concerned here with the legal responsibility arising out of mental disorder or insanity or unsoundness of mind. Need for developing cooperation and collaboration between legal discipline which is, as such, deductive, doctrinal, authoritative, practical and psychiatry discipline, which is inductive, empirical, heuristic and theoretical has become imperative.

Both law and psychiatry focussed on human tendency, human culture, human behaviour and are concerned with consolidating and integrating societal norms and to understand, predict and control individual action, attitude, values and anxieties due to common interest, necessity for constructive collaboration, collective enterprise and co-operative movement in the context of paradigms in transition is obligatory and mandatory to deal with problem of mental disease, rights, responsibility and treatment for successful voyage and the judicial process in search of truth for which all of us are striving ahead.

It will be, really, interesting to refer to the historical background which has led to the introduction of the provisions of section 84 of the IP Code. It is based on what are called Mac Naughten Rules. There is a very interesting story behind the formulation of such rules. We may not enter into the detailed story, but, it would be expedient to highlight the important part of it. The origin of Mac Naughten Rules can be traced as early as in 1843. One Mr Edward Drummond, the Private Secretary of the then Prime Minister of England, Sir Robert Peel, was shot dead by one Daniel Mac Naughten. Mac Naughten suffered from delusion of persecution and cherished a strong belief that his life was in danger on account of acts of persecution by the Tory party on him. He shot dead Mr Drummond on the belief that he was

killing the Tory Prime Minister Mr. Peel. It was established that Mac Naughten suffered from paronoid delusions and was given acquittal on the ground of insanity. Prior to that in England, English law accepted the theory of partial insanity under the concept of monomania, which means that a person may suffer from one delusion alone and may be normal in all other respects. By passage of time, authorities questioned about the correctness of the doctrine and philosophy of monomania, but there was little dispute about the correctness of the verdict in Mac Naughten's case. However, the general public of England became concerned over the case and the resultant judgment of the House of Lords. Certain sections of society, seriously, criticised it. Upon such a development, the Supreme Court Judges of Great Britain were summons by the House of Lords to know the position of the law of England regarding crime and the doctrine of insanity. The Hon'ble Judges were asked certain questions by the members of the House and answers given by them are usually and popularly known as Mac Naughten Rules.

The provisions incorporated in section 84 of the IP Code are based upon the above rules. It must also be noted, in this connection that the standard of uncontrollable or irresponsible impulses has not yet formed a part of criminal law in England. Even an attempt to amend Mac Naughten Rules made 1924 in the House of Lords by Lord Justice Darling while moving to the second reading of the Criminal Responsibility (Trial) Bill met with stiff opposition, and consequently, the Bill had to be withdrawn. The same is the position in India. Insanity is a good defence, but uncontrollable or irresponsible impulses is no defence.

The cause of mental disorder may be grouped, particularly, under two categories, i.e. (1) Intrinsic Cause and (2) Extrinsic Cause. In so far as intrinsic group is concerned, the following aspects are required to be considered:

(1) Heredity
(2) Psychogenic
(3) Inborn urges
(4) Epochs of life.

Inso far as extrinsic group is concerned, it may be mentioned that it may be mentally or physically certain episodes or aspects of life, such as, death of kith and kin, failure of life, unpleasant marriage, chronic health, monetary crisis, financial reverses, domestic

abnormality and many such other aspects of life where emotions are inseparable from the stress and strain, which at times, affect the mental equilibrium and psychological disorder.

To assess the criminal responsibility of insane person, certain other rules have come to be formulated and have been employed in search of truth in criminal trials in subsequent periods in different countries at different times. It would not be possible to trace and quote all such rules, but to quote some of the important rules will be useful:

(1) Durham's Rules of 1954: These Rules state that an accused person is not criminal responsible if his unlawful act is the outcome of mental deformity, defect or disease.

(2) Curren's Rules of 1964: These Rules state that an accused person is not responsible for criminal act, if at the time of committing the act, he did not have the capacity to regulate his conduct to the requirements of law, which is the culmination of mental defect or disease.

(3) The American Law Institute Recommendations: These recommendations are to the effect that a person is not responsible for his criminal conduct if at the time of such conduct, as a result of mental disease or defect, he lacs in adequate mental capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law.

The provisions of different rules of different countries, undoubtedly, have one common feature and an identical perception in them. It is that in most cases, Law Court persons are not much interested to know the type of insanity or mental unsoundness of the accused persons. They are, really, interested to comprehend and appreciate, if in a given case under consideration of the Court, the criminal act committed by the accused, whether was the product of unsoundness of mind. Therefore, truly speaking, it is not necessary that factors like, intelligence, emotion, perception, orientation, judgment, capacity, understanding capacity to know, should be assessed in their absolute terms. The main anxiety of the Court of law should be to understand as to whether the person, who has committed the act, would have committed the same act in same condition with average intelligence, rationale, emotion having good

understanding and judgment capacity with same type of perception, orientation and belief, as he had at the time of committing the act, or whether, his state of mind is at such an abnormal level as to make all these factors irrelevant for him. Therefore, even in case of an unlawful act, if it is committed by such a mentally unsound person, he will not be designated or characterised as an offender and that is the heart and theme of one of the important general exceptions prescribed in section 84 of the IP Code.

It is in the context of the aforesaid proposition of law, the evidence of the prosecution in general, and the evidence of defence witness Dr.Agarwal, a psychiatrist, is required to be assessed and evaluated. A person who is, otherwise, having a successfully enjoyed marital life (if not bliss) for more than a quarter of century, out of which there were as many as six children and, who had never entertained any grudge or grievance against his lovable spouse, in view of the evidence on record, without any rhyme or reason, motive or object go on giving axe blows on the person of his wife, Jiji and unusually throwing the axe there and then on the spot, going away and who was caught and kept till the Police came, who, unfortunately, though advised by Dr.Agarwal, under whose treatment and medical management, he was for two years, prior to the date of the incident, was not admitted as an indoor patient and who was treated by one and all persons of the village, including his family members as mad-man and dangerous person. It is, in this context, the provisions of section 328 and 339 of the Criminal Procedure Code, which make provisions as to accused persons of unsound mind, including fitness for trial and subsequent procedure, should have been invoked so as to obviate such an unfortunate episode or an incident.

At this stage, we cannot resist the temptation of mentioning about the provisions of the Mental Health Act, 1987 (Act No.14 of 1987) which have replaced the Indian Lunacy Act, 1912 and the Lunacy Act, 1977. It is an Act to consolidate and amend the law relating to the treatment and care of mentally ill persons to make better provisions with respect to their property and affairs of such persons. Unfortunately, it appears that the benevolent provisions of Mental Health Act have not been, fully, successfully, implemented as per the statutory mandate. We could not be positively informed as to whether the rule making authorities have exercised and implemented the provisions of Mental Health Act as

required under section 94 of the said Act. We are also tempted to refer to the provisions of section 91, which pertains to legal aid to be provided to mentally ill persons at State expense in certain cases. Section 91(3) provides that the High Court may, with the previous approval of the State Government, make rules providing for :

(a) the mode of selecting legal practitioners for the purpose of sub-sections (1) and (2);

(b) the facilities to be allowed to such legal practitioners;

(c) the fees payable to such legal practitioners by the Government and generally for carrying out the purpose of sub-sections (1) and (2).

We deem it necessary to request the Registrar of this High Court to, appropriately, bring up such an issue before the Full House after taking appropriate instructions from the Hon'ble Chief Justice.

We may also highlight following important and clear clinical pearls, elaborately mentioned while classifying the cognitive disorders in a book "Diagnostic and Statistical Manual of Mental Disorders, IV Edn.

* Several of the most frequently underdiagnosed disorders in medicine are delirium and early dementia.

* The most common causes of delirium in hospitalised patients are medication side effects.

* Delirious patients are not always either obtunded or agitated; some may be hyper-aroused and excitable or quietly delirious.

* The EEG is very sensitive for delirium, but relatively insensitive in dementia.

* A mild dementia may be one of the earliest signs of HIV infection occurring before sings of systemic immunosuppression.

* Intravenous haloperidol may be given for rapid control of severely agitated delirious patients, but the necessity of its use should be carefully documented.

* Neurological signs and symptoms of B12 deficiency have been reported before hematologic changes and in the presence of a normal serum B12 level.

* Depression and dementia may coexist, and the mood disturbance may exacerbate the cognitive and psychosocial dysfunction of the demented patient. Major depression rarely mimics the pervasive and progressive picture of dementia unless the patient already has some degree of underlying dementing illness.

It is the fundamental principle of criminal jurisdiction that an accused is presumed to be innocent and therefore the burden lies on the prosecution to show the culpability of the accused beyond reasonable doubt. The prosecution, therefore, in a case of homicide, like the one on hand, shall prove beyond reasonable doubt that the accused had requisite intention described in section 299 of the IP Code. This kind of general burden always rests on the prosecution. If a person is accused of any offence, onus of showing general exception claiming immunity from the criminal liability under IP Code or any other special law is on the accused, and the Court shall presume absence of such circumstances.

However, it is open for the Court to consider from the evidence on record, as to whether the existence of such circumstance is spelt out or even if it is probable. It is open for the Court to act upon that such circumstance did exist at the relevant time. If it is shown from the evidence before the Court by the defence, even by probabilising it, it is sufficient to discharge the onus placed on him under section 105 read with section 4 of the Indian Evidence Act. Even from the evidence of requisite doubt in the mind of the Court as regards one or other necessary ingredients of the offence itself, the benefit should go to the accused. Therefore, the rebuttable presumption that the accused was not innocent when the crime was committed could be rebutted by placing before the Court, the relevant material from the evidence, oral or documentary, or circumstantial, so as to earn the benefit of section 84 of the Indian Penal Code. In this connection, the observations in para 5 and 7 made by the Hon'ble Supreme Court in Dahyabhai v. State of Gujarat, AIR 1964 SC 1563 are very relevant and which supports the aforesaid proposition. It is, therefore, very clear that there is no conflict between the general burden which is always on the prosecution and

which never shifts and the special burden that rests on the accused to make out his defence by raising any one of the general exceptions like that, defence of insanity. Once, it is shown to be probable, then the accused is entitled to the benefit of section 84. The onus of establishing insanity is on the accused, but is not higher than which rests upon a party to a civil proceedings.

In case of raising defence of insanity, and claiming the benefit of section 84 of the IP Code, the set of mind of the accused before and after the commission of the act is very relevant. In our opinion, upon critical appraisal of the evidence of the prosecution coupled with the defence expert witness, Psychiatrist, Dr. Agarwal, the behavioral and psychic conduct of the accused preceded and succeeded after the incriminating act, the defence has succeeded in showing that the plea of unsoundness of mind of accused at the time of committing the offence is probable and therefore, in our opinion, accused is entitled to the benefit of the provisions of general exception enshrined in section 84 of the IP Code. The Trial Court, with due respect, has failed to appreciate this aspect in its proper perspective, culminating into miscarriage of justice, while rejecting the plea of insanity raised by the defence which is noticed by us to be probable and, therefore, accused person is entitled to the benefit thereof.

In the result, the appeal is allowed. The impugned judgment and order recorded by the Trial court in Sessions Case No.103/95 is quashed and set aside to the extent by holding that the appellant-original-accused is entitled to the benefit under section 84 of the Indian Penal Code. Consequently, the appellant-accused shall be released forthwith if not required in any other case. The direction with regard to disposal of muddamal articles shall remain undisturbed.

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(vjn)